

Hon. Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

PLINTRON TECHNOLOGIES USA LLC,

Plaintiff,

v.

JOSEPH PHILLIPS, RICHARD PELLY,
THOMAS MATHEW, GREG
MCKERVEY, and DESIREE MICHELLE
GRAY,

Defendants.

No. 2:24-cv-00093-MJP

PLAINTIFF'S MOTION FOR
ALTERNATIVE SERVICE

**NOTE ON MOTION CALENDAR:
February 5, 2025**

Pursuant to Federal Rule of Civil Procedure 4(e)(1) and 4(h)(1), Plaintiff Plintron Technologies USA LLC ("Plaintiff" or "Plintron USA") by and through its counsel, respectfully submits this Motion for Alternative Service for an Order authorizing Plintron USA to complete service of process via the California Secretary of State on Megatel Netcom Corporation ("Megatel") of the attached subpoena.

INTRODUCTION

Plintron USA filed its Complaint against five former employees, Joseph Phillips, Richard Pelly, Thomas Mathew, Greg McKerverey, and Desiree Michelle Gray ("Defendants"), on January 22, 2024. *See* Complaint, Dkt. 1. As part of Plintron USA's ongoing fact discovery, Plintron USA identified at least five former or current Plintron USA

1 customers who engaged in business discussions or entered into agreements with competing
2 or complimentary companies. One such customer is Megatel Netcom Corporation.

3 To investigate the extent of these interactions and agreements and obtain relevant
4 information, Plintron USA prepared a subpoena for documents and deposition testimony
5 from Megatel.

6 As set forth in more detail below, Plintron USA's efforts to serve Megatel were
7 persistent but ultimately unsuccessful. These efforts were:

- 8 • Plintron USA attempted to serve Megatel at the California address of its
9 registered agent;
- 10 • Plintron USA attempted to serve Megatel at its corporate location; and
- 11 • Plintron USA sent multiple emails to its corporate contacts at Megatel but
12 never received a response.

13 Despite Plintron USA's persistent efforts over several weeks and through these different
14 channels, service of the subpoena was not completed.

15 Under California law, this Court may authorize service on a California corporation
16 via service on the California Secretary of State if "it is shown by affidavit to the satisfaction
17 of the court that process against a domestic corporation cannot be served with reasonable
18 diligence upon the designated agent." Cal. Corp. Code § 1702(a); *see also id.* § 1702(d)
19 (service can be authorized by any federal court where action is pending); Cal. Civ. Proc.
20 Code § 416.10(d). Because Plintron USA has been unable to serve Megatel, Plintron USA
21 seeks an Order authorizing service of the subpoena by way of the California Secretary of
22 State.

23 BACKGROUND

24 I. Plintron USA's Attempts to Serve Megatel's Registered Agent.

25 On November 8, 2024, Plintron USA began its attempts to serve a subpoena seeking
26 the production of certain documents and deposition testimony on Megatel at the address

1 listed for its registered agent—Yonghui Liu. *See generally* Ex. 6. The initial attempt of
 2 Plintron USA’s service processor, Serving by Irving Inc., was unsuccessful as no such
 3 registered agent was found at the provided address. *Id.*

4 The process server initially made seven attempts at service, including waiting for
 5 hours at a time and “staking out” the location. *Id.* Despite several attempts, there was no
 6 answer at the location. *Id.* Other attempts resulted in no answer despite there being vehicles
 7 parked in the driveway, observed movement from inside the residence, or lights on at the
 8 residence. *Id.* at ¶¶ 5-9. On two attempts an unidentified woman was observed leaving the
 9 residence, but no response was made upon subsequent service. *Id.* at ¶¶ 9-10.

10 **II. Plintron USA’s Attempts to Serve Megatel at its Corporate Address.**

11 Plintron USA’s service efforts continued on December 5, 2024 when Plintron USA
 12 attempted to serve the subpoena on Megatel at Megatel’s corporate address—11100 Valley
 13 Boulevard, Suite 202, El Monte, California. *See* Ex. 7 at ¶ 2-3. During this attempt, the
 14 door for Suite 202 was locked, however, a note in the window of Suite 202 instructed that
 15 if Suite 202 was closed to go to Suite 200. *Id.* at ¶ 3. When the process server visited Suite
 16 200, it was also closed. *Id.* Finally, the process server visited Suite 316, where the building
 17 receptionist informed him that Suites 202 and 200 were empty, and that although Megatel
 18 was in Suite 202, they moved out approximately one year ago. *Id.* The California Secretary
 19 of State, however, still lists Megatel’s status as active in relation to the listed corporate
 20 address featured on Megatel’s website. *See* Songer Decl. Ex. 2.; *see also* Ex. 3.

21 **III. Further Attempts by Plintron USA to Serve Megatel.**

22 Plintron USA also attempted to initiate service on Megatel by emailing its corporate
 23 contact, Steven Ni, on two separate occasions—November 19, 2024 and January 2, 2025.
 24 *See* Songer Decl. Ex. 4. Plintron USA never received a response from its outreach. *Id.* at
 25 ¶ 6. On January 7, 2025, Plintron USA attempted initiate service on Megatel by emailing
 26 Peter Liu, Megatel’s Chief Financial Officer. *See* Songer Decl. Ex. 5. In this

1 correspondence, Plintron USA also included Steven Ni in copy line. *Id.* Unsurprisingly,
 2 Plintron USA's email went unanswered once again. *Id.* at ¶ 7.

3 ARGUMENT

4 I. Megatel Cannot be Served with Reasonable Diligence.

5 Plintron USA seeks an Order from the Court allowing Plintron USA to serve
 6 Megatel via the California Secretary of State. Pursuant to Federal Rule of Civil Procedure
 7 4(e)(1) and 4(h)(1), corporations may be properly served by "following state law for serving
 8 a summons in an action brought in courts of general jurisdiction in the state where the
 9 district court is located or where service is made." Fed. R. Civ. P. 4(e)(1). Rule 4(h)(1)(a)
 10 provides that a plaintiff may serve a corporation located in a judicial district of the United
 11 States "in the manner prescribed by Rule 4(e)(1) for serving an individual." Fed. R. Civ. P.
 12 4(h)(1)(a).

13 Under California law, a court may authorize service on a California corporation via
 14 service on the California Secretary of State if "it is shown by affidavit to the satisfaction of
 15 the court that process against a domestic corporation cannot be served with reasonable
 16 diligence upon the designated agent." Cal. Corp. Code § 1702; *see also* Cal. Civ. Proc.
 17 Code § 416.10(d). "To demonstrate 'reasonable diligence,' the plaintiff must show that it
 18 'took those steps a reasonable person who truly desired to give notice would have taken
 19 under the circumstances.'" *Bakery & Confectionery Union & Indus. Int'l Pension Fund v.*
 20 *Dick's Bakery, Inc.*, 2020 WL 4284821, at *3 (N.D. Cal. July 27, 2020). Reasonable
 21 diligence may include stakeout or repeated attempts at service utilizing a service processor.
 22 *See Pac. Bell Tel. Co. v. 88 Connection Corp.*, 2016 WL 946132, at *3 (N.D. Cal. Mar. 14,
 23 2016) (finding that attempts at service including stakeouts showcased reasonable diligence
 24 in attempting to effectuate service); *see also Dick's Bakery*, 2020 WL 4284821, at *3
 25 (granting motion where Plaintiffs made repeated attempts at service using a service
 26 processor).

Despite Plintron USA’s reasonable diligence, Plintron USA was unable to locate and serve Megatel’s registered agent. *See* Exs. 6, 7. Plintron conducted seven attempts to serve Megatel’s registered agent, Yonghui Liu and one attempt to serve Megatel at its corporate address—which is listed as active with the California Secretary of State. *Id.* Moreover, Plintron USA sent several emails to Megatel’s corporate contacts, Steven Ni and Peter Liu, in an attempt to effectuate service. *See* Songer Decl. Exs. 4-5. All of these attempts were unsuccessful. *Id.*; *see also* Songer Decl. ¶¶ 3, 6-7. These repeated attempts by the service processor on Megatel’s registered agent included “‘stakeouts’ where the process server waited for hours at a time.” *See Pac. Bell Tel. Co.*, 2016 WL 946132, at *3 (granting motion for service on California corporation via California Secretary of State where plaintiff made multiple personal service attempts at the business address on record and followed leads by its private investigator to attempt to locate the registered agent without success); *see also Dick’s Bakery*, 2020 WL 4284821, at *3 (granting motion where Plaintiffs made repeated attempts at service using a service processor).

As a result of Plintron USA’s exhaustive but unsuccessful attempts to serve Megatel, Plintron USA has demonstrated reasonable diligence, and an Order authorizing service on Megatel via the California Secretary of State pursuant to Cal. Corp. Code § 1702 is proper.

CONCLUSION

For the foregoing reasons Plintron USA seeks an Order from the Court allowing Plintron USA to serve the California Secretary of State in lieu of Megatel’s designated registered agent.

1 I certify that this memorandum contains 1,322 words, in compliance with the Local
2 Civil Rules.

3 DATED this 15th day of January, 2025.

4 Respectfully submitted,

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